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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,299

12/31/2003

Diane Dietrich

4612-103.1

1683

7590 05/04/2007  
Mathews, Collins, Shepherd & McKay, P.A.  
Suite 306  
100 Thanet Circle  
Princeton, NJ 08540

EXAMINER

ASTORINO, MICHAEL C

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

05/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/750,299

Applicant(s)

DIETRICH, DIANE

Examiner

Michael C. Astorino

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-11 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-11 & 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

The Examiner acknowledges the response filed January 22, 2007.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18, 8, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Corder US

Patent Number 5692906.

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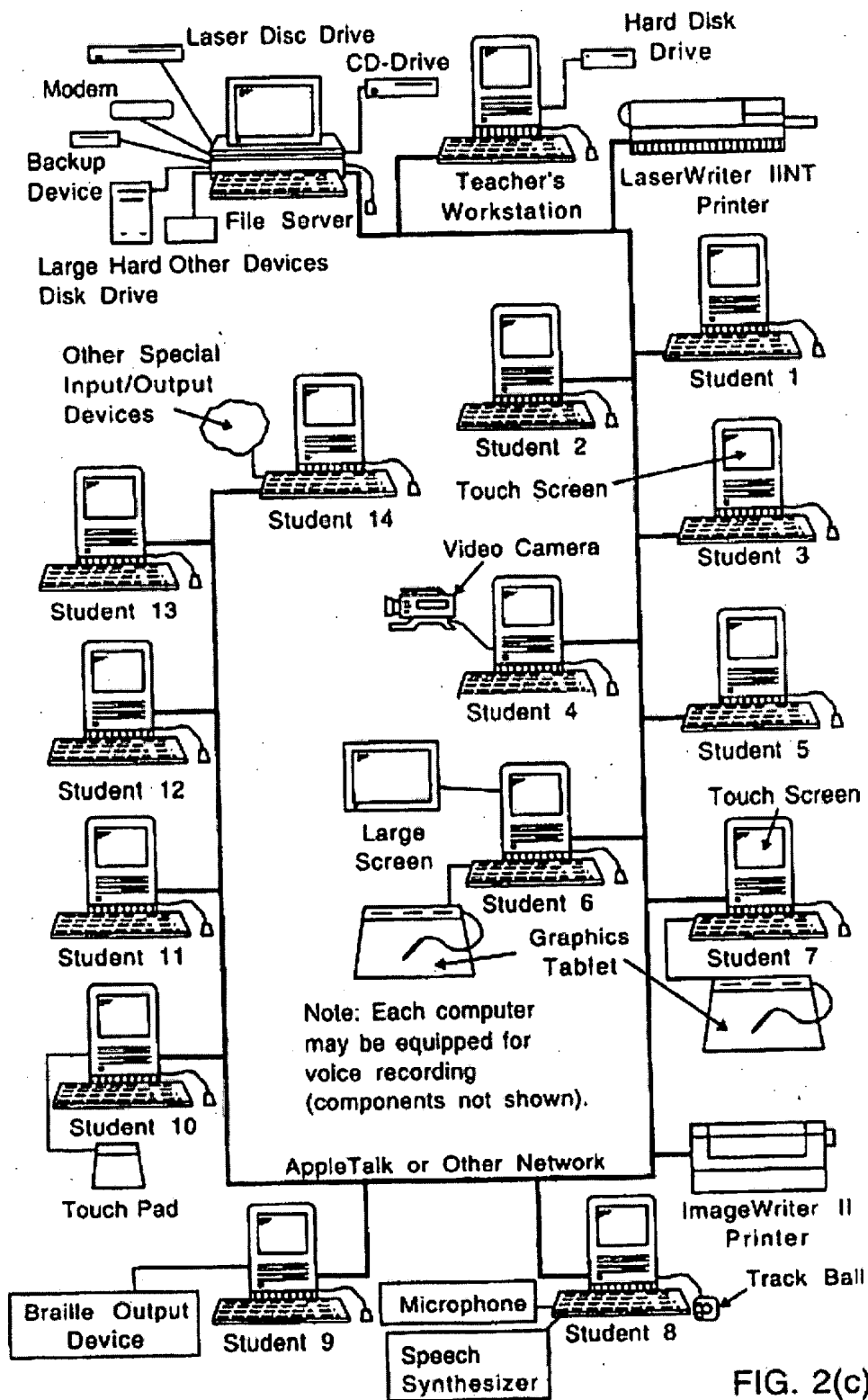


FIG. 2(c)

Corder teaches: a method of identifying strengths and weaknesses in a student's ability to use their sensory channels which integrates five basic processes into a series of testing procedures. First, the nature of the test is specified, either by a teacher or by a pre-programmed default stored in the memory of a computer. Second, test material suitable for use with a test of the specified nature is identified and extracted from the memory of the computer and then presented to the student using the outputs of the computer. The responses of the student through the inputs of the computer are then recorded and analyzed for patterns which are capable of being correlated with deficiencies in the sensory channels under test. Finally, procedures are recommended for remediating the deficiencies identified by analysis of the performance data.

Corder further teaches the CHANNEL OF LEARNING axis 302 embodies the independent avenues of learning that are available to the student using the method of the present invention. These channels include the Auditory, Verbal, Visual (unreadable, of course, to the hypothetical visually-impaired student described above), Kinesthetic, and Tactile channels of learning. This is the personal capability axis. The SYSTEM COMPONENT axis 304 shown in FIG. 3 includes the hardware components that facilitate the learning process described above. These components can include the CPU, computer screen, keyboard, mouse, speaker, software, mass storage devices, sound digitizer, microphone, touch-screen, printer, graphics tablet, light pen, touch tablet, braille device, network hardware, laser discs and associated playback equipment, video devices, voice analysis hardware and software, speech and sound synthesizers, handwriting analysis hardware and software, and video analysis hardware and software, some of which are depicted in FIG. 2c. This is the physical system axis.

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Also, the process followed by the teacher to conduct a diagnostic test of the auditory discrimination and auditory memory aspects of the auditory channel of learning is depicted in the logic diagrams of FIGS. 4, 5, 6a and 7a. The teacher selects the diagnostic focus of the auditory test or accepts the defaulted focus suggested as a result of previous performance by the student.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corder as applied to claim 18 above, and further in view of Wallace et al. US Patent Number 6,688,889 B2.

Corder teaches everything except for the use of the internet as a communication path. However, Wallace et al. a reference in an analogous art does teach the use of the Internet as a communication path as a substitute for a networked system. (col. 7, lines 37-51). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the networked system of Corder in view of internet communication system of Wallace et al., since Wallace et al. teaches that one is substitutable for the other.

***Response to Arguments***

Applicant's arguments with respect to pending claim have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

  
 M. H. HASKY  
 DISTRICT EXAMINER  
 DISTRICT CENTER 3700